



Department of the Treasury  
Internal Revenue Service  
**Tax Exempt and Government Entities**  
PO Box 2508  
Cincinnati, OH 45201

Number: 202034011  
Release Date: 8/21/2020

UIL Number: 501.03-00, 501.03-30, 501.03-31

Date:  
May 26, 2020  
Employer ID number:

Form you must file:  
1120  
Tax years:

Person to contact:  
Name:  
ID number:  
Telephone:

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit [www.irs.gov](http://www.irs.gov).

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Notice 437, Notice of Intention to Disclose, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034

Redacted Letter 4038



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Date:  
March 5, 2020  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = state  
C = date  
D = location  
e = number

**UIL:**

501.03-00  
501.03-30  
501.03-31

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

**Issues**

Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons stated below.

**Facts**

You were formed in the state of B on C. You did not provide your Articles of Incorporation with your application, but provided an attestation that your Articles of Incorporation contain a purpose clause limiting your purposes to one or more purposes described in IRC Section 501(c)(3) as well as a dissolution clause that permanently dedicates your assets for Section 501(c)(3) purposes. You did submit a copy of your declaration of covenants and restrictions.

You have stated that you are a homeowners association, whose members are the homeowners of the D residential subdivision consisting of e homes. You collect yearly dues, enforce covenants and pay maintenance on mutually owned property. This property includes a marina, tennis court, and entrance area with a sign, all of which are maintained by a collection of annual membership dues. You indicated that the marina and tennis court, your recreation area, are located behind a locked gate which only your members have access to by key.

You provided a map of the neighborhood and stated that the entry to the neighborhood is not gated. You also provided a photograph of the gated entrance to the marina and tennis court area of the neighborhood which has signs indicating that the area is for "Members Only".

## Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious, scientific, or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, in order for an organization to be exempt under IRC Section 501(c)(3), it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest. To meet this requirement that it serve a public purpose, an organization must establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 69-175, 1969-1 C.B.149 describes an organization which was formed by parents of pupils attending a private school. The organization provided bus transportation to and from the school for those children whose parents belong to the organization. The organization did not qualify for exemption under IRC Section 501(c)(3) because it served a private rather than public interest.

Revenue Ruling 70-186, 1970-1 C.B. 128 held that a nonprofit organization formed to preserve and improve a lake used extensively as a public recreational facility qualifies for exemption under IRC Section 501(c)(3).

Revenue Ruling 75-286, 1975-2 C.B. 210 held that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefitting the community as a whole as well as enhancing members' property rights, will not qualify for exemption under IRC Section 501(c)(3).

Revenue Ruling 78-85, 1978-1 C.B. 150 held that a nonprofit organization with membership open to the general public that was formed by residents of a city to help preserve, beautify, and maintain a public park located in the city and whose support is derived from membership dues and contributions from the general public is operated exclusively for charitable purposes and qualifies for exemption under IRC Section 501(c)(3).

In Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47 (1966), exemption was retroactively revoked from a corporation organized to conduct the dredging of certain waterways. It was held that the corporation was organized and operated primarily for the benefit of those persons owning property adjacent to the waterways dredged rather than for public or charitable purposes.

## Application of law

You are not described in IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you are not operated exclusively for charitable purposes.

You are not organized and operated exclusively for any IRC Section 501(c)(3) exempt purpose. Your activities of collecting funds to maintain areas used by the members of your association provides direct benefits to these individuals that are more than insubstantial in nature. For this reason, you are not operating exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). As a result, you do not satisfy the operational test requirements to be recognized as exempt under Section 501(c)(3) of the Code. This precludes you from exemption under Section 501(c)(3).

You are similar to the organization in Revenue Ruling 69-175 in that you were formed to provide benefits to your members. Your activity is to provide regular maintenance for common areas used in private by your members and collect monthly fees for your operations. Maintaining property that would otherwise have to be maintained by your individual members serves private interests. Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

You are dissimilar to the organizations described in Revenue Rulings 70-186 and 78-85 in the sense that you are not engaged in preserving or maintaining public property. You are similar to the organizations described in Revenue Ruling 75-286 and in Benedict Ginsberg and Adele W. Ginsberg in that your activities, more specifically providing maintenance of privately used land for your members, serve private rather than public interests. Your activity is not useful and beneficial to the general public as a whole.

### **Conclusion**

Based on the information submitted, you are not organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). Rather, you are organized and operated primarily for the private interests of your members, homeowners of the D residential subdivision, which is a substantial non-exempt purpose. Accordingly, you do not qualify for exemption under Section 501(c)(3).

### **If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

### **If you don't agree**

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative

- The following declaration:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

**Where to send your protest**

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Mail Stop 6403  
P.O. Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Mail Stop 6403  
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

**Contacting the Taxpayer Advocate Service**

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't

been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements